

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELIAS D. AVILA,

Petitioner,

v.

MIKE MCDONALD, Warden,

Respondent.

No. C 08-3424 SBA (PR)

**ORDER DENYING REQUEST FOR  
CERTIFICATE OF  
APPEALABILITY AND MOTION  
FOR LEAVE TO PROCEED IN  
FORMA PAUPERIS ON APPEAL**


(Docket Nos. 22 & 23)

This matter came before the Court for consideration of Petitioner's pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his 2006 conviction in San Benito County Superior Court. The petition was denied on its merits. Petitioner has filed a motion for leave to proceed in forma pauperis on appeal. Because the appeal is not taken in good faith, Petitioner's request to appeal in forma pauperis (Docket No. 23) is DENIED. See 28 U.S.C. § 1915(a)(3).

A certificate of appealability was denied in the order denying the petition. *See* Rules Governing Section 2254 Cases 11(a). Consequently Petitioner's motion for such a certificate (Docket No. 22) is DENIED as moot.

IT IS SO ORDERED.

DATED: 10/20/10

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

1  
2 UNITED STATES DISTRICT COURT  
3 FOR THE  
4 NORTHERN DISTRICT OF CALIFORNIA

5 ELIAS D. AVILA,

6 Plaintiff,

7 v.

8 FELKER et al,

9 Defendant.

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Case Number: CV08-03424 SBA

**CERTIFICATE OF SERVICE**

10  
11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
12 Court, Northern District of California.

13 That on October 20, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
16 located in the Clerk's office.

17 Elias Daniel Avila F-34850  
18 High Desert State Prison  
19 P.O. Box 3030  
20 Susanville, CA 96127

21 Dated: October 20, 2010

22 Richard W. Wieking, Clerk  
23 By: LISA R CLARK, Deputy Clerk  
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